

UNITED STATES OF AMERICA

v.

**Manning, Bradley E.
PFC, U.S. Army,
HHC, U.S. Army Garrison,
Joint Base Myer-Henderson Hall
Fort Myer, Virginia 22211**

**Prosecution Proposed
Case Calendar
Update**

29 February 2012

1. The proposed calendar is based upon several assumptions. To the extent these assumptions prove to be incorrect or too ambitious, the schedule will be correspondingly longer. These assumptions are:

a. The United States and defense file their motions according to the judicial calendar, and there are no continuances.

b. All parties to this court-martial protect classified information and err on the side of caution when creating documentation that could contain classified information.

c. The military judge establishes adequate procedures under Military Rule of Evidence (MRE 505) to adjudicate defense requests and to review potentially discoverable documents.

d. Based on the accused's charged and alleged misconduct, including the alleged compromise of over 700,000 documents which are presumed classified, there are more than ten military commands, national intelligence agencies, and Executive Branch Departments which have equities directly involved to varying degrees, and more than fifty of the same with tangential involvement.

e. Defense requests for classified information do not require inter-agency coordination between multiple Executive Branch Departments, Agencies, and organizations.¹

f. No additional clearances or "read-ons" to any programs will be required based on the United States or defense's use of classified information.

g. All fact witnesses are available for trial and a trial date is set sixty days in advance of the last round of pretrial motions hearings, so that the United States can properly coordinate with senior members of the United States government and all witnesses for both the defense and government. For a contested court-martial, the United States intends to call more than forty witnesses for the trial, many of whom will be offered as expert witnesses.

h. The United States has gathered more than 100,000 documents consisting of more than 3 million pages. The United States has gathered approximately eight terabytes of useable digital information found on approximately twenty-three items of digital media belonging to the

¹ The United States recognizes that the defense is unaware of the approval processes for certain classified information and will make requests based on classified information it deems necessary under MRE 505.

accused, third-party individuals, and the United States, which it intends to offer for admission and use during this court-martial.² The United States also intends to offer for admission more than seventy-five different pieces of documentary evidence. For purposes of this schedule, the United States assumes the defense will not stipulate to evidence admission.

i. The consolidation of issues relating to classified information during pretrial hearings and trial will increase judicial efficiency and minimize potential delay.

j. Although the General Court-Martial Convening Authority recently selected the current panel, panel availability will likely change by 1 June 2012, thus changing the venire.

2. Prosecution Proposed Calendar. The prosecution separated the projected issues into seven phases. These seven phases build upon each other and culminate with all litigation concerning classified information closer to the trial. Most of the classified evidentiary motions are predicated upon decisions on the legal and unclassified evidentiary motions.

a. **Phase 1. Immediate Action (21 February 2012 - 16 March 2012)**

(1) **Proposed Case Calendar**

- (A) Original Filing: 21 February 2012
- (B) Secondary Filing: 29 February 2012
- (C) Response: N/A
- (D) Article 39(a): 15-16 March 2012

(2) **Defense Motion for Appropriate Relief under MRE 505**

- (A) Filing: 17 February 2012
- (B) Response: 8 March 2012
- (C) Article 39(a): 15-16 March 2012

(3) **Defense Bill of Particulars**

- (A) Filing: 16 February 2012
- (B) Response: 8 March 2012
- (C) Article 39(a): 15-16 March 2012

(4) **Defense Motion to Compel Discovery #1**

- (A) Filing: 16 February 2012
- (B) Response: 8 March 2012
- (C) Article 39(a): 15-16 March 2012

(5) **Defense Motion to Compel Depositions**

- (A) Filing: 16 February 2012
- (B) Response: 8 March 2012

² A terabyte of storage space could roughly hold "3.6 million 300 Kilobyte images or maybe about 300 hours of good quality video." *United States v. Salzer*, No. S-10-0061, 2011 WL 1466887, slip op. at 1 n.2 (E.D.Cal., Apr. 18, 2011). Additionally, a terabyte is roughly equivalent to the digital version of "1,000 copies of the Encyclopedia Britannica" or one-tenth of the printed collection of the Library of Congress. *Id.*

(C) Article 39(a): 15-16 March 2012

b. Phase 2. Legal Motions, excluding Evidentiary Issues (29 March 2012 - 20 April 2012)

(1) Prosecution Proposed Members Instructions, including elements, for Article 104, Article 134, Specifications 1 through 16, including Lesser Included Offenses.

- (A) Filing: 29 March 2012
- (B) Response: 12 April 2012
- (C) Article 39(a): 19-20 April 2012

(2) Defense Unlawful Command Influence

- (A) Filing: 29 March 2012
- (B) Response: 12 April 2012
- (C) Article 39(a): 19-20 April 2012

(3) Defense Improper Referral

- (A) Filing: 29 March 2012
- (B) Response: 12 April 2012
- (C) Article 39(a): 19-20 April 2012

(4) Defense Dismissal of Charges

- (A) Filing: 29 March 2012
- (B) Response: 12 April 2012
- (C) Article 39(a): 19-20 April 2012

(5) Defense Jurisdictional Defects

- (A) Filing: 29 March 2012
- (B) Response: 12 April 2012
- (C) Article 39(a): 19-20 April 2012

(6) Defense Constitutional Challenges to UCMJ, MREs and RCMs

- (A) Filing: 29 March 2012
- (B) Response: 12 April 2012
- (C) Article 39(a): 19-20 April 2012

(7) Unreasonable Multiplication of Charges

- (A) Filing: 29 March 2012
- (B) Response: 12 April 2012
- (C) Article 39(a): 19-20 April 2012

(8) Updated Proposed Case Calendar

- (A) Filing: 29 March 2012
- (B) Response: N/A
- (C) Article 39(a): 19-20 April 2012

(9) **Reciprocal Discovery Requests**

- (A) Filing: 29 March 2012
- (B) Response: 12 April 2012
- (C) Article 39(a): N/A

(10) **MRE 404(b) Disclosures**

- (A) Filing: 6 April 2012

(11) **Witness Lists Exchanged**

- (A) Filing: 6 April 2012
- (B) Government Response: 13 April 2012

(12) **Production of Compelled Discovery for Defense Motion to Compel Discovery #1**

- (A) Date: 16 April 2012³

c. **Phase 3. Evidentiary Issues not Involving Classified Information under MRE 505**
(23 April 2012 - 17 May 2012)

(1) **Compel Discovery #2⁴**

- (A) Filing: 23 April 2012
- (B) Response: 7 May 2012
- (C) Article 39(a): 14-16 May 2012

(2) **Motions *in Limine***

- (A) Filing: 23 April 2012
- (B) Response: 7 May 2012
- (C) Article 39(a): 14-16 May 2012

(3) **Motions to Suppress**

- (A) Filing: 23 April 2012
- (B) Response: 7 May 2012
- (C) Article 39(a): 14-16 May 2012

(4) **Compel Experts**

- (A) Filing: 23 April 2012
- (B) Response: 7 May 2012
- (C) Article 39(a): 14-16 May 2012

(5) **Compel Witnesses**

- (A) Filing: 23 April 2012

³ This date is proposed for unclassified information. If the information is classified, the United States will evaluate whether it should request a continuance, in order to properly determine how many original classification authorities must approve production or an alternative under MRE 505.

⁴ Although the defense has stated they will only file a single motion to compel discovery, the United States anticipates at least one additional motion to compel discovery for unclassified information.

- (B) Response: 7 May 2012
- (C) Article 39(a): 14-16 May 2012

(6) Pre-Admit Evidence

- (A) Filing: 23 April 2012
- (B) Response: 7 May 2012
- (C) Article 39(a): 14-16 May 2012

(7) Pre-Authenticate Evidence

- (A) Filing: 23 April 2012
- (B) Response: 7 May 2012
- (C) Article 39(a): 14-16 May 2012

(8) Pre-Qualify Experts⁵

- (A) Filing: 23 April 2012
- (B) Response: 7 May 2012
- (C) Article 39(a): 14-16 May 2012

(9) Requests for Judicial Notice

- (A) Filing: 23 April 2012
- (B) Response: 7 May 2012
- (C) Article 39(a): 14-16 May 2012

(10) Privileges

- (A) Filing: 23 April 2012
- (B) Response: 7 May 2012
- (C) Article 39(a): 14-16 May 2012

(11) Defense Notice of Intent to Disclose Classified Information under MRE 505(h)(1)

- (A) Filing: 23 April 2012

(12) Defense Notice of Accused's Forum Selection and Notice of Pleas in Writing

- (A) Date: 17 May 2012⁶

⁵ The United States anticipates that a minimum of two days will be required to pre-qualify all experts, which focus on unclassified material.

⁶ If the accused selects a panel, the United States proposes the panel be notified no less than sixty days prior to trial, in order to coordinate for extended special duty and travel.

d. Phase 4. Evidentiary Issues Involving Classified Information under MRE 505 (24 May 2012 - 22 June 2012)⁷

- (1) **Motions *in Limine***
 - (A) Filing: 24 May 2012
 - (B) Response: 7 June 2012
 - (C) Article 39(a): 20-22 June 2012
- (2) **Litigation Concerning MRE 505 Substitutions (including In Camera Review)**
 - (A) Filing: 24 May 2012
 - (B) Response: 7 June 2012
 - (C) Article 39(a): 20-22 June 2012
- (3) **Motions to Suppress**
 - (A) Filing: 24 May 2012
 - (B) Response: 7 June 2012
 - (C) Article 39(a): 20-22 June 2012
- (4) **Compel Experts**
 - (A) Filing: 24 May 2012
 - (B) Response: 7 June 2012
 - (C) Article 39(a): 20-22 June 2012
- (5) **Compel Witnesses**
 - (A) Filing: 24 May 2012
 - (B) Response: 7 June 2012
 - (C) Article 39(a): 20-22 June 2012
- (6) **Pre-Admit Evidence**
 - (A) Filing: 24 May 2012
 - (B) Response: 7 June 2012
 - (C) Article 39(a): 20-22 June 2012
- (7) **Pre-Authenticate Evidence**
 - (A) Filing: 24 May 2012
 - (B) Response: 7 June 2012
 - (C) Article 39(a): 20-22 June 2012
- (8) **Pre-Qualify Experts**
 - (A) Filing: 24 May 2012
 - (B) Response: 7 June 2012
 - (C) Article 39(a): 20-22 June 2012

⁷ This process will likely require the military judge to review classified information within a special facility or under special handling procedures. Additionally, this process will likely take some time for the military judge to make her rulings on all classified information evidentiary motions.

(9) Judicial Review of Discoverable Information

- (A) Filing: 24 May 2012
- (B) Response: 7 June 2012
- (C) Article 39(a): 20-22 June 2012

(10) Production of Compelled Discovery for Defense Motion to Compel Discovery #2

- (A) Date: 14 June 2012⁸

e. Phase 5. Miscellaneous Motions (15 June 2012 - 18 July 2012)⁹

(1) Grunden Hearing for all Classified Information

- (A) Filing: 15 June 2012
- (B) Response: 6 July 2012
- (C) Article 39(a): 16-18 July 2012

(2) Article 13

- (A) Filing: 15 June 2012
- (B) Response: 6 July 2012
- (C) Article 39(a): 16-18 July 2012

(3) Speedy Trial, including Article 10

- (A) Filing: : 15 June 2012
- (B) Response: 6 July 2012
- (C) Article 39(a): 16-18 July 2012

(4) Pre-Qualify Additional Experts

- (A) Filing: : 15 June 2012
- (B) Response: 6 July 2012
- (C) Article 39(a): 16-18 July 2012

(5) Any Additional Motion that does not have an Identified Deadline

- (A) Filing: 15 June 2012
- (B) Response: 6 July 2012
- (C) Article 39(a): 16-18 July 2012

⁸ This date is proposed for unclassified information. If the information is classified, the United States will evaluate whether it should request a continuance, in order to properly determine how many original classification authorities must approve production or an alternative under MRE 505.

⁹ The defense stated during multiple RCM 802 conferences, that they expect the Speedy Trial motion to be very lengthy. The United States expects the Article 13 motion to be very lengthy and potentially require many witnesses to travel from across the United States. The United States proposes one additional week before the responses are due, and this will allow more time to answer the motions while concurrently planning for the Phase 4 motions hearing (20 - 22 June 2012).

f. **Phase 6. Member Selection (23 July 2012 - 30 July 2012)**

(1) **Voir Dire Questions**

(A) Filing: 23 July 2012

(B) Response: N/A

(C) Article 39(a): N/A

(2) **Flyer Due**

(A) Filing: 23 July 2012

(3) **Questionnaires**

(A) Filing: 23 July 2012

g. **Phase 7. Trial by Members (30 July 2012 - 17 August 2012)**

(1) Article 39(a): 30 July 2012

(2) Voir Dire: 31 July 2012

(3) Trial: 31 July -3 August 2012, 6- 10 and 13 - 17 August 2012¹⁰



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¹⁰ Although all parties, panel members, and witnesses should be available seven days each week, the prosecution recommends scheduling the trial with members for five days per week, to allow the panel members two-days rest so they may better stay focused on their duties and better retain the information.